

**MINUTES OF THE  
ADMINISTRATIVE RULES REVIEW COMMITTEE**  
Monday, January 14, 2002 – 10:00 a.m. – Room 416 State Capitol

**Members Present:**

Sen. Howard A. Stephenson, Senate Chair  
Rep. David Ure, House Chair  
President Al Mansell  
Sen. Ed Mayne  
Sen. Michael G. Waddoups  
Rep. Judy A. Buffmire  
Rep. James R. Gowans  
Speaker Martin R. Stephens

**Members Absent:**

Sen. Mike Dmitrich  
Rep. John E. Swallow

**Staff Present:**

Mr. Arthur L. Hunsaker, Research Analyst  
Ms. Susan Creager Allred, Associate General Counsel  
Ms. Cassandra Bauman, Legislative Secretary

**Note:** A list of others present and a copy of materials can be found at <http://www.image.le.state.ut.us/imaging/history.asp> or by contacting the committee secretary at 538-1032.

**1. Call to Order and Approval of Minutes**

Chair Ure called the meeting to order at 10:17 a.m.

**MOTION:** Rep. Gowans moved to approve the minutes of the December 11, 2001 meeting. The motion passed unanimously with Sen. Mayne absent for the vote.

**2a. State Debt Collection Policies**

Sen. Stephenson explained the issue as brought to the Committee at its December 11, 2001 meeting.

Ms. Raylene Ireland, Chair, State Debt Collection Advisory Board, explained that the Board met and discussed the issues raised at the Committee's last meeting regarding Office of State Debt Collection rules. She also indicated that the Procedures and Guidelines Manual is under review and many of its provisions will be written into rule.

Ms. Candace Daley, Utah Association of Collectors, stated that the Board was very cooperative in working with the concerns of the Association.

**b. State Agency Policies and Rules**

Chair Ure indicated that the Committee needs to review its authority to address state agency policies that meet the requirements for rulemaking but are not in rule.

Mr. Hunsaker distributed "State Agency Policies and Rules" and briefly summarized some of the Committee's statutory authority. He observed that UCA §63-46A-2(13)(b) states that "a policy is a rule if it conforms to the definition of a rule." He then cited portions of the Administrative Rulemaking Act related to the definition of "rule" and rulemaking exemptions.

Committee discussion followed.

Mr. Ken Hansen, Director, Division of Administrative Rules, clarified that UCA §63-46A-7 does not identify exemptions to the rulemaking act, but emergency rulemaking criteria.

**MOTION:** Rep. Buffmire moved that staff research options for amending the boldface of UCA 63-46A-7 to clarify that the criteria are not for exemptions to the rulemaking act, but emergency rulemaking criteria. The motion passed unanimously with Sen. Mayne and Speaker Stephens absent for the vote.

**MOTION:** Sen. Stephenson moved that the Committee adopt option 3, which is to include policies in annual omnibus legislation.

Sen. Stephenson indicated that the statute is clear that when a policy follows the definition of a rule it is a rule, and stated that the Committee should treat it as a rule when considering rules for the annual sunset legislation.

Mr. Kent Bishop, Governor's Office of Planning and Budget, explained that one of the criterium for a rule is that it has the effect of law. He indicated that a rule has the effect of law if it has gone through rulemaking. He explained that the Governor's office is considering an executive order, asking state agencies to (1) determine the need to promulgate or amend rules to define or clarify enforcement or compliance expectations, (2) cite to and quote the applicable statute or rule text which gives authority to any advisory documents, and (3) adopt rules which are statements of policy or procedure meant for regulatory application.

Mr. Hansen indicated that any advisory documents which meet the definition of a rule need to go through the rule making process. He indicated that the Committee has authority to review "rules," which should include things that should be rules that have not gone through the rulemaking process. He stated that a court will not uphold policies that should be in rule but are not and that an executive order may be of assistance in educating agencies.

Mr. Gary Doxey, Governor's Office, said that it is very important to preserve the authority of the executive branch to deal with itself internally. He stated that any policies which conform to the definition of a rule should be in rule. He explained that rulemaking is a designation of legislative authority to executive branch agencies and that policies are internal executive functions. Mr. Doxey stated that the issue of policies versus rules should be studied further. He indicated that it is a separation of powers issue and expressed concern with how the Committee would distinguish between questionable policies and the need for the executive branch to make policies.

Mr. Pat Shea, attorney and law professor, stated that state agencies should have the maximum degree of freedom in creating policy. He stated his belief that only a court has the authority to say that a policy is unconstitutional.

Rep. Buffmire requested that Sen. Stephenson clarify his motion regarding policies to be reviewed.

Sen. Stephenson amended his motion to insert "that conform to the definition of a rule" after "policies."

The motion passed unanimously with Sen. Mayne and Speaker Stephens absent for the vote.

### **3. Break for Lunch**

**MOTION:** Rep. Buffmire moved that the Committee recess for lunch. The motion passed unanimously with Sen. Mayne and Speaker Stephens absent for the vote. Chair Ure adjourned the meeting at 12:01 p.m.

Chair Ure called the meeting to order at 2:19 p.m.

### **4. Firearm Policies of State Agencies**

Mr. James Beadles, attorney, UDOT (Utah Department of Transportation), explained that UDOT had a firearms policy since 1997, but it has been repealed. He stated that there is currently no policy regulating possession of firearms under UDOT Policies and Procedures. He distributed a memorandum re: Deletion of UDOT Policy and Procedure 05D1, Firearms in the Workplace.

Speaker Stephens clarified that the Administrative Rules Review Committee has authority to review rules to determine if the proper statutory authority is given to the agencies writing those rules and that the Committee was not established to debate whether or not the rules are reasonable.

Mr. J. Bernard Machen, President, U. of U. (University of Utah), distributed written comments and reviewed them with the Committee. He indicated that the U. of U. will stand by its policy prohibiting firearms and that an exemption should be placed in statute to allow the regulation of firearms within institutions of higher education. He stated that the court may need to provide an opinion on the issue before the rule would be repealed. He indicated that the U. of U. legal staff told him that it was their opinion that the policy was legal because the U. of U. would be exempt from the current statute. The Committee requested a copy of the legal opinion.

Mr. Rick Wheeler, Snow College, indicated that the policy of Snow is similar to the U. of U. He stated that students, faculty, and staff are not permitted to possess firearms on campus. He said he wants the college to be in compliance with the law and able to protect the safety of the students.

Mr. Ryan Thomas, President, College of Eastern Utah, stated that the college does not currently have a policy regulating firearms. He indicated that two options are being considered pending the decision of the Committee regarding the authority of institutions of higher education to regulate the possession of firearms.

Mr. Dorian Page, Associate Vice President, Southern Utah University, indicated that the Student Handbook states "because of the danger involved, students are not allowed to keep firearms on the campus except at approved times or in designated storage areas." He stated that the policy has been in effect for many years and that he is unaware of any statutory authority to place that restriction on the students.

Mr. Brent Goodfellow, SLCC (Salt Lake Community College), expressed similar concern as the other institutions regarding the safety of the students, but indicated that SLCC adopted a policy which states "weapons are prohibited on campus, except as provided by law."

Committee discussion followed.

Mr. Val Peterson, Associate Vice President of College Relations, UVSC (Utah Valley State College), indicated that UVSC policies fall within student rights and responsibilities and that students are required to conduct themselves in an appropriate manner. He stated that students cannot possess firearms on campus. He indicated that UVSC discourages staff and faculty from possessing firearms as well.

Mr. Craig Simper, University Counsel, Utah State University, indicated that there is no policy for the regulation of firearms on campus. He indicated that the students living on campus are required to sign a contract which indicates that the student will not possess a firearm. He referred to *Sweezy v. New Hampshire* (1957) and discussed the First Amendment rights of students regarding academic freedom.

Mr. Paul Thompson, President, Weber State University, indicated that a policy was adopted in 1994 regarding judicial hearings. He indicated that Weber State created a secure area where the use of metal detectors is present. He related a tragic incident which led to the creation of the policy. He stated that Weber State will seek legislation for an exemption for a secure area for hearings which would restrict firearms. He indicated that there are other policies restricting the possession and use of firearms on campus that have been in effect since 1977.

Mr. Bill Fowler, Vice President Student Services, Dixie State College, indicated that there is a policy regulating the possession and use of firearms on campus for students, but no policy exists for faculty or staff.

Dr. Mike Marshall, State Veterinarian, Department of Agriculture and Food, indicated that the Department does not have a policy regulating the possession of firearms.

Mr. Mitch Vilos, author, Utah Gun Law, indicated that 76-10-505.5 prohibits guns on school premises without a permit. He indicated that the definition of school premises is within 1000 feet of any school zone, which he believes includes institutions of higher learning.

Mr. Matt Ball, student, University of Utah, indicated that the institutions of higher education do not currently have the authority to make policies governing the possession of firearms with a concealed weapons permit on school campuses and that the policies are unlawful.

Mr. Charles Hardy, Policy Director, Gun Owner's of Utah, indicated that the institutions do not have adequate authority to implement the policies or rules. He stated that the policies have not been authorized by the Legislature as required by statute.

Ms. Sara Thompson, Director, Utah Gun Owner's Alliance, stated that the institutions are promoting lawlessness and said that the institutions have been violating the law for the past 5 years.

Mr. Terry Trease stated that testimony from the institutions presented a terrible precedent. He indicated that the institutions have been exhibiting an act of insubordination for the past 5 years.

Mr. John Spangler, Utah Shooting Sports Council, stated that the institutions are trying to justify the unjustifiable. He commended the Committee on its efforts to review unauthorized policies.

Ms. Mara Karabellow, Gun Violence Prevention Center of Utah, indicated that other municipalities and government officials preempt the concealed carry law. She stated that the Committee needs to review legislative intent. She stated that "the best form of government is the most local form of government" and that the institutions are in a better place to decide what is best for the students who attend those institutions.

Mr. Mark Shurtleff, Attorney General, State of Utah, stated that the policies of the institutions of higher education are in violation of state law.

Speaker Stephens stated that the Committee needs to recommend the sunset of policies that are clearly in violation of statute.

Rep. Buffmire indicated that statute provides that rulemaking is not required for schools regulating their students and suggested that it may constitute an exemption for the institutions of higher education.

**MOTION:** Speaker Stephens moved to place all the rules which have come forth to the Committee in its last three meetings on the sunset list and once those rules have been modified and sent to the Division of Administrative Rules, the rules may be taken off the sunset list.

**SUBSTITUTE MOTION:** Rep. Buffmire moved to delay the action until the Committee can review authority of state agencies to write the policies and meet at a later date. The motion failed with Rep. Buffmire voting in favor.

Speaker Stephens amended his motion to include requesting that staff research the issue and whether or not the statute should be clarified and if so, call the chairs to reconvene the Committee. The motion passed unanimously.

## **5. Judicial Conduct Commission: Response to Rules Analysis**

Mr. Steve Stewart, Executive Director, JCC (Judicial Conduct Commission), distributed "Judicial Conduct Commission Proposed Rules Changes," indicating that two issues were reviewed: (1) whether the rules go beyond statutory authority, and (2) whether the rules comply with statute. He stated that the JCC met on January 8, 2002 to discuss amending the rules of the JCC. He stated that the proposed rule changes have not yet been reviewed by the JCC.

Chair Ure suggested that staff review the proposed rule changes and contact Rep. Katherine Bryson if any additional concerns arise. He suggested that the Committee hold a meeting if additional concerns are found.

## **6. Draft Bill: Reauthorization of Administrative Rules**

Mr. Hunsaker indicated that the current draft copy of the annual rules reauthorization bill, which had several rules added to it by motion during the meeting, would be updated by staff. He also said that new and revised rules intended to address the Committee's concerns continue to be submitted to the Division of Administrative Rules for publication.

**MOTION:** Sen. Waddoups moved to approve the draft legislation, with the inclusion of rules that are not in compliance with statute as discussed by the Committee, until new or revised rules are filed with the Division of Administrative Rules. The motion passed unanimously with President Mansell and Speaker Stephens absent for the vote.

## **7. Committee Business**

No additional business was discussed.

## **8. Adjourn**

**MOTION:** Sen. Waddoups moved to adjourn the meeting. The motion passed unanimously with President Mansell and Speaker Stephens absent for the vote. Chair Ure adjourned the meeting at 4:31 p.m.